

July, 2003

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APIL's 'guarded welcome' to proposed changes in multi-party action funding

Association of Personal Injury Lawyers secretary Mark Harvey has given a guarded welcome to proposed changes to funding code guidance in multi-party actions.

The Legal Services Commission's amendments propose extending eligibility to legal aid funding for the generic aspects of a multi-party action, those areas which link the common elements of the claim. "This would enable those who would not otherwise qualify for public funding to participate in group actions," Harvey said. "But we are concerned that if the action is lost, individual claimants within those group actions could still face thousands of pounds of their opponent's costs relating to the individual aspects of their claim."

"We believe it is crucial that the individual's case costs should be treated in a similar way, and we have written to the commission asking for clarification on this issue," he added.

"The commission's expectation is that multi-party actions could, in part, be funded on a conditional fee basis with after-the-event insurance. But our members' experience is that it's extremely difficult to secure after-the-event insurances in multi-party actions. Even where it can be secured it is prohibitively expensive, making it very difficult for people with valid claims to get them off the ground."

He cited the group claim arising from the Potters Bar train crash as an example. "Many may view this as a less than complex group action yet the victims have been unable to obtain insurance cover where their lawyer was prepared to act on a conditional fee basis."

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He also pointed out that in the group action relating to the second generation contraceptive pill, the defendants' costs were believed to be between £17 and £20 million. "Considering the way in which the after-the-event insurance market is pricing its premiums in non-personal injury claims - at around 25-40 per cent of the indemnity sought - this would equate to a premium of £4-£8 million!"

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